

**STATE OF NEW MEXICO  
BEFORE THE SECRETARY OF ENVIRONMENT**

**IN THE MATTER OF THE APPLICATION  
OF CRESTWOOD NEW MEXICO PIPELINE, LLC – WILLOW LAKE GAS  
PROCESSING PLANT  
FOR AN AIR QUALITY PERMIT**

**AQB 21-38**

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**NEW MEXICO ENVIRONMENT DEPARTMENT AIR QUALITY BUREAU'S  
AMENDED PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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COMES NOW, the Air Quality Bureau (“Bureau”), within the Environmental Protection Division (“Division”) of the New Mexico Environment Department (“Department”), and respectfully submits this Closing Argument and Proposed Findings of Fact and Conclusions of Law in the above captioned matter, pursuant to 20.1.4.400(B) NMAC.

**I. PROPOSED FINDINGS OF FACT**

**A. The Applicant and Facilities**

1. Crestwood New Mexico Pipeline, LLC (“Permittee”) is a Texas-based foreign limited liability company and the owner/operator of the Willow Lake Gas Processing Plant (“Facility”), located in Eddy County, New Mexico, Section 20 and 29 Range 28E, Township 24S, and operating under Permit No. 5142M8. [AR No. 1, Bates 007-009].

2. The facility consists of two (2) process units to recover natural gas liquids (“NGL”): Willow Lake 1 consists of a turbo-expander cryogenic separation system that removes a significant fraction of the C2+ compounds from the cooled gas stream, and Willow Lake 2 consists of a refrigerated Joule-Thompson (RJT) plant that also removes C2+ compounds using a combination of mechanical refrigeration and a Joule-Thompson effect. Willow Lake 1 has a maximum

processing capacity of 20 MMSCFD of natural gas. Willow Lake 2 has a maximum processing capacity of 35 MMSCFD of natural gas. The two processing units have separate inlets but share two outlet residue lines. [NMED Exhibit 25 at 2; AR No. 13, Bates 400-412].

**B. The Bureau's Administrative and Technical Review of the Respective Applications**

3. The application for the Facility ("Application") was received by the Bureau on February 19, 2021. [NMED Exhibit 25 at 2].

4. In the Application, the Permittee proposes addition of three (3) compressor engines, one (1) Vapor Recovery Unit (VRU), one (1) produced water/condensate tank, one (1) TEG glycol dehydrator and one (1) reboiler, increase in throughput to tanks and truck loading, update to control efficiency for seven existing engines, revision to flare emission calculation to accommodate new equipment, revision to tank calculation based on estimated increase in throughput, update to fugitive components, update to unit name changes and control device unit name changes. This application was updated by the applicant during AQB review; the most recent update to the application was received September 14, 2021. This latest update included higher limits for throughput for condensate and truck loading, but offset those emissions with additional controls so that overall facility emissions decreased from the previous versions of the application. [NMED Exhibit 25 at 2; AR No. 1].

5. Upon receipt of the Application, Bureau staff forwarded the Permittee's respective modeling files to the Bureau's Modeling Manager. [NMED Exhibit 25 at 3].

6. On March 8, 2021, Bureau staff were informed that the Application could be ruled complete from a modeling perspective. [NMED Exhibit 25 at 2; AR No. 27, Bates 549 - 550].

7. On March 18, 2021, Bureau staff ruled the Application administratively complete. [NMED Exhibit 25 at 3; AR Nos. 2, Bates 0243-0247].

8. Bureau staff began the technical review of the Application after a determination that each application was administratively complete. During the technical review, Bureau staff verified emissions calculations by confirming the correct emission factors and formulas were used in calculating emissions for all sources. If methods were unclear, Bureau staff asked the Permittee's consultant for further explanation or updates, as necessary. Bureau staff also verified the emissions totals from the calculations matched the emissions totals in Section 2 of the application. [NMED Exhibit 25 at 4].

9. Bureau staff reviewed the emission calculations submitted in the Application for all regulated equipment and the respective emission factors relied upon in those calculations. The Facility's emissions were calculated using Excel spreadsheets using manufacturer's data sheet emission factors, Texas Commission on Environmental Quality emission factors, or the United States Environmental Protection Agency's ("EPA") *AP-42 Compilation of Air Emission Factors*, including EPA's *Protocol for Equipment Leak Emission Estimates (EPA-453/R-95-017)*, as well as oil and gas industry software, such as *ProMax®*. [NMED Exhibit 25 at 4-5].

10. The Bureau's administrative and technical reviews for the Application are summarized in the Statement of Basis, which is a permitting record that includes: (1) a description and history of the facility; (2) a regulatory applicability review; (3) a compliance discussion; (4) any public response received by the Department; and (5) a summary any unique conditions in the permit. [NMED Exhibit 25 at 4; AR No. 13, Bates 0400-0412]. [NMED Exhibit 25 at 20].

11. Bureau staff testified that based on the Bureau's administrative and technical review of the Application, the Bureau recommends that the Secretary adopt the Draft Permit. [NMED Exhibit 25 at 20].

**C. The Bureau's Public Outreach for the Application**

12. For the Application Bureau staff sent the completion determination letter, including a copy of the Department's Legal Notice, and the invoice for the permit fee to the applicant on March 18, 2021. [NMED Exhibit 25 at 3].

13. Bureau staff also sent the Bureau's Legal Notice to EPA Region 6; Erica LeDoux at EPA, the air permit contact for the State of Texas, and the Chief of Resource Stewardship and Science Division at Carlsbad Caverns National Park on March 18, 2021. The Department's Legal Notice was posted on the AQB website on the page with all public notices of permitting actions and initially published in the *Carlsbad Current Argus* on March 20, 2021, and a revised public notice published in the *Carlsbad Current Argus* on April 22, 2021, to update the method for contacting permit writers for submission of comments. [NMED Exhibit 25 at 3; AR No. 6 and 7, Bates 352 and 354; AR No. 28, Bates 551; AR No. 8, Bates 356 – 360; AR No. 9, Bates 361 – 363].

14. The Bureau sent out the first citizen letter for the Application on April 16, 2021. [NMED Exhibit 25 at 3; AR No. 18, Bates 510 - 512].

15. The Bureau received WildEarth Guardians' ("WEG") initial comments for the Application on April 16, 2021. [NMED Exhibit 25 at 3; AR No. 16, Bates 500 – 503].

16. On May 27, 2021, the Bureau mailed a copy of the Draft Permit and the second citizen letter to WEG and interested parties. The draft permit and second citizen letter were posted

on the AQB website May 28, 2021. This started the second 30-day comment period for the application with an end date of June 27, 2021. The Bureau received additional comments from WEG on June 28, 2021. [NMED Exhibit 25 at 4; AR No. 19, Bates-513; AR No. 17, Bates 504 - 509].

**D. The Draft Permit**

17. On September 14, 2021, Crestwood revised their application to add a new VRU, increase throughput of the tanks and truck loading; the emissions of which were offset by additional control devices (additional VRU) and changes to routing of emissions to various existing control devices. The application was reviewed, calculations reviewed and approved. The new changes were incorporated in a new draft of the permit Part A (only) and new draft of the Statement of Basis (version 2021.9.21). [NMED Exhibit 25 at 4; AR No. 15, Bates 466 – 499; AR No. 13, Bates 400 – 412].

18. Conditions in the Draft Permit are Facility Specific Requirements, unique to the facility. They are site-specific and based on information provided in the applications. Conditions in Part B of the permits are General Conditions and standard language which generally apply to all sources. Part C is also standard language about supporting on-line documents, definitions, and acronyms which apply to all sources. [NMED Exhibit 25 at 7-8].

19. The Draft Permit began with standardized language in a Bureau permit template and standardized AQB monitoring protocols added as necessary for the sources of emissions and control devices proposed for the facility. Since all of the Application is for modifications to an existing permit, many conditions were already in place but required revision to address respective facility changes. [Id. at 8].

**E. Air Dispersion Modeling for the Respective Permits**

20. Bureau staff verified that the Application followed appropriate modeling practices, as informed by the New Mexico Modeling Guidelines. Details of the modeling are described in the Modeling Review Report. [NMED Exhibit 12 at 1; NMED Exhibit 15; AR No. 10].

21. Bureau staff confirmed that the modeling for the Application was performed in accordance with the New Mexico Modeling Guidelines. If the facilities operate in compliance with the terms and conditions of the respective draft permits, then they will not cause or contribute to any concentrations above state or federal ambient air quality standards or PSD increments. The facilities have satisfied all modeling requirements. [Id.].

**F. Public Notice of the Hearing**

22. The Notice of Hearing was written per requirements in 20.1.4 NMAC. The Notice of Hearing was translated into Spanish by Ana Maria MacDonald, Translation Program Manager for the Department, and was received by the Bureau on September 20, 2021. On September 21, 2021, Notices of Hearing in English and in Spanish were posted on the Department's Docketed Matters page under the Cabinet Secretary dropdown, in the link for the respective docket number and facility name. The notice was also posted on Department's public notice website under the Lea or Eddy County dropdown, in the link for each of the facilities included in the hearing. [Id. See sections above for citations to specific notice documents]

23. The Notice of Hearing was published in English and in Spanish in three newspapers. Both Notices were published in the *Carlsbad Current-Argus* on September 22, 2021. Both Notices were published in the *Albuquerque Journal* on September 23, 2021. Both Notices were published in the *Hobbs Daily News-Sun* on September 24, 2021. On September 22, 2021,

emails with the Notices of Hearing in English and in Spanish attached were sent to individuals and groups that had been previously directly notified about one of the permit applications or that submitted comments on a permit application. [Id. at 2-3. *See sections above for citations to specific notice documents*].

24. For the Facility, the notice was sent to the Bureau of Land Management, the Lea County Manager, the Eddy County Manager, the State of NM Land Office, the US EPA, the State of Texas, Carlsbad Caverns National Park, Carlsbad Department of Development ("CDD"), the Village of Loving, and both J. Nichols and M. Nykiel from WEG. These emails included a message informing the recipients the Notices of Hearing along with other information were available for review on NMED's public notice website <https://www.env.nm.gov/public-notices-2/> under the Eddy dropdown, in the link with the name of this facility. [Id. at 3-7. *See sections above for citations to specific notice documents*].

#### **G. WildEarth Guardians' Challenges to the Permits**

25. At the public hearing in this matter, WEG's witness testified that the Bureau had resolved most of WEG's concerns about the Application and Draft Permit with a few exceptions. The witness explained

[WEG] provided comments on the initial -- during the initial comment period whereby the Environment Department asks if there's any public interest. We signaled that we were interested and tried to provide some comments, some general comments. When the Environment Department afforded us a second opportunity to comment and provided us a draft permit and statement of basis to review, we submitted further comments, often elaborating on our original letter and original concerns that we raised. And we did that for all these permits . . . we weighed in, we constantly gave the Environment Department information, and flagged our concerns, and now during this hearing we're finally getting some clarity around some of our questions, some of our concerns, and some issues with the permits.

[10/26/21 2 Tr. 314:11-21; 315:1-16]

26. WEG's witness testified that the only outstanding challenges to the Draft Permits were "the enforceability of startup, shutdown, maintenance, and malfunction emission limits, and compliance with the Executive Order on Environmental Justice . . ." [10/26/21 2 Tr. 314:11-21; 315:6-316:12]

**i) Environmental Justice**

27. At the hearing, WEG raised concerns about the Bureau's permitting procedures with regard to the issue of environmental justice. WEG's witness testified that

I mean, our concerns basically boil down to the substance of what environmental justice is, that procedurally the Environment Department may have taken some steps to address environmental justice concerns, but that substantively environmental justice was not achieved, primarily around the issue of cumulative impacts related to ozone pollution, which as we commented, can disproportionately impact people of color and low-income communities that may be impacted by other sources of industrial air pollution, and therefore are experiencing compound effects related to high ozone, and that those effects should have been addressed as part of their duty to ensure environmental justice.

[10/26/21 2 Tr. 317:11-24].

28. An objection was raised to WEG's testimony on the grounds that WEG's witness was not qualified to draw the legal conclusion that the Bureau did not fulfill its duty with regard to the issue of environmental justice. The Hearing Officer sustained the objection. [10/26/21 2 Tr. 341:13-21].

**ii) Flaring Events**

29. WEG raised concerns about how the all of the draft permits in this matter deal with flaring events. WEG's witness testified

One, the startup, shutdown, and maintenance [for all the Draft Permit] emissions related to flaring, which is a common limit in all . . . permits. The concern there is that the number of flaring events or startup, shutdown, maintenance events are not



limited such that as a practical matter the annual limits will actually be complied with, that they -- the intention is that those annual limits serve as a backstop, but as a practical matter, because there are no limits on operational parameters to limit the hourly emissions or the number of hourly emissions events, that as a practical matter that backstop is not effective.

The second issue related to those -- enforceability of these limits is related to venting emissions, primarily venting during malfunction events, but there are venting emission limits in relation to other events, as well. The concern there is that the permits do not set forth any kind of methodology or specific requirement for how the companies must measure the volume of VOC emissions. It uses -- the permits use very general language that does not ensure that as a practical matter accurate volumes of VOC emissions will be calculated such that companies will be able to effectively demonstrate compliance with the venting emission limits.

[10/26/21 2 Tr. 318:10-319:10].

30. Bureau staff testified that the conditions in the Draft Permit “comply with all air quality regulations and contain demonstrations of compliance for all conditions and emission limits to ensure compliance with Ambient Air Quality Standards. [NMED Exhibit 17 at 9].

## **II. PROPOSED CONCLUSIONS OF LAW**

31. The Secretary has jurisdiction over the subject matter of the Application and the parties to this proceeding and is authorized by the Act to issue or deny permits for new and existing facilities based upon information submitted in a permit application and relevant information received during the public hearing. NMSA 1978, §74-2-7 (1972 as amended through 2003); 20.2.72.206-207 NMAC.

32. In a permit proceeding hearing before the Secretary of the Environment, “the Applicant or Petitioner has the burden of proof that a permit . . . should be issued and not denied . . . the [Bureau] has the burden of proof for a challenged condition of a permit or license which the [Bureau] has proposed. Any person who contends that a permit condition is inadequate, improper,

or invalid, or who proposes to include a permit condition shall have the burden of going forward to present an affirmative case on the challenged condition.” 20.1.4.400(A)(1) NMAC.

33. The Permittee properly submitted its Application pursuant to the Air Quality Control Act (“Act”), NMSA, 1978 74-2-1 to -17 (1967 as amended through 2019) and the Air Quality Rules, and all the required information is included in the application. 20.2.72.200(A); 20.2.72.402(A)(3); 20.2.72.203 and 20.2.72.403 NMAC.

34. Permittee’s Application establishes that the Facility meets the applicable statutory and regulatory standards, will not cause or contribute to air contaminant levels in excess of national or state standards or, and will not violate any other provision of the Air Quality Control Act or the CAA. NMSA 1978, § 74-2-7(C).

35. The Bureau’s administrative and technical review of the Application was thorough, complete, and sufficient to support the determination that the Application was administratively and technically complete. 20.2.72.201(B); 20.2.72.207(A) NMAC.

36. The Bureau has met all the elements of the statutory and regulatory standards with regard to public notice of the determination of administrative and technical completeness, and notice of the Draft Permit. NMSA 1978, §§ 14-11-2 (1941 as amended through 1999); 14-11-4 (1941); 14-11-6 (1941); 14-11-10.2 (2003); 20.2.72.206(A)(3) NMAC.

37. The Bureau has met all the elements of the regulatory standard with regard to public notice of the public hearing. NMSA 1978, §§ 14-11-2 (1941 as amended through 1999); 14-11-4 (1941); 14-11-6 (1941); 14-11-10.2 (2003); 20.1.4.200(C)(2)(a) NMAC.

38. The Bureau has met all of the elements of the regulatory standards with regard to public outreach and receiving public comment. 20.2.72.206(A)(1) and (2) NMAC; 20.2.72.206(B)

NMAC;

39. The Public Hearing in this matter was held in accordance with an Order for a public hearing entered by the Secretary of the Environment. 20.2.72.206(C) NMAC.

40. The hybrid virtual/in-person venue of the Public Hearing in this matter was appropriate and complied with the standing public health orders. NMSA 1978, § 47-2-7(I) (1972 as amended through 2003); 20.2.72.206-207 NMAC; and 20.1.4 NMAC; Executive Order 2020-004; 3-24-20 Public Health Order.

41. WEG has failed to meet its burden to prove that any conditions of any of the Draft Permit are inadequate, improper or invalid. 20.1.4.100(A)(1) NMAC.

42. The Draft Permit meets all of the applicable standards, rules and requirements of the Air Quality Control Act and the CAA. NMSA 1978, § 74-2-7(C).

### **III. CONCLUSION**

For the reasons set forth above, the Bureau respectfully requests that the Hearing Officer adopt these findings of fact and conclusions of law, and recommend that the Secretary uphold the Bureau's decision to issue the Permit in this matter.

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing New Mexico Environment Department Air Quality Bureau's *Proposed Findings of Fact and Conclusions of Law* was served via electronic mail on the following parties of record on December 1, 2021:

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